



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 7, 1992

Mr. Norbert J. Hart
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR92-582

Dear Mr. Hart:

You have received a request for information relating to a certain contract between the City of Corpus Christi (the "city") and SPM/Texas Tire Recyclers, Inc. Specifically, the requestor seeks "all data, correspondence, etc. connected with the" city's contract with SPM/Texas Tire Recyclers, Inc. for the period January 1, 1991 through August 14, 1992. You claim that some of the information submitted to us for review is excepted from required public disclosure by section 3(a)(11) of the Texas Open Records Act, 6252-17a, V.T.C.S.¹

Section 3(a)(11) excepts from required public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. *See, e.g., Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision No. 538 (1990) at 2. Facts and written observation of facts and events, when such information is severable from advice, opinion or recommendation, cannot be withheld under section 3(a)(11). *See generally* Open Records Decision No. 213 (1978).

¹You advise that you have released to the requestor some of the documents you have forwarded to us. We limit our opinion accordingly to the remaining documents.

Section 3(a)(11) also applies as a general rule to interagency and intra-agency communications. It may, however, apply to documents prepared by third parties in certain limited situations. For example, in Open Records Decision No. 273 (1981), this office held that an advisory committee and its findings were within the section 3(a)(11) exception because the committee was authorized to act and did act as an official arm of the university. This office also has held section 3(a)(11) applicable to documents prepared for an agency by an outside consultant if the consultant has some duty to advise the agency or acts on the agency's behalf in an official capacity; however, it does not apply to materials prepared by one outside the agency who has no official responsibility to do so, but acts only as an interested party. *See, e.g.*, Open Records Decision Nos. 563 (1990); 466, 462 (1987); 437 (1986); 429 (1985).

With regard to the documents at issue here, we have marked the portion of the intra-agency memorandum dated January 30, 1992 that you may withhold since it contains advice, opinion and recommendation. The remainder of the memorandum must be released since it contains severable factual information. The draft documents dated March 2, 1992, February 7, 1992, and February 28, 1992, may be withheld pursuant to section 3(a)(11) only if they satisfy the requirements set forth in Open Records Decision No. 559 (1990) at 2-3 (severable factual information in draft but not in final must be released). Enclosed is a copy of that decision. We cannot in this instance determine the applicability of the test for drafts set forth in that decision since you have not provided us a copy of the final document. You have two weeks from the date of this letter to do so and mark the drafts accordingly, or to otherwise establish that all or part of the drafts are within the section 3(a)(11) exception.

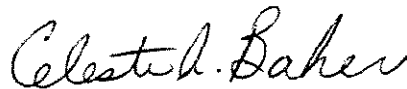
You have also not established that the February 11, 1992 letter is within the section 3(a)(11) exception. That letter on its face indicates that it is not an interagency or intra-agency communication, and you have not explained that the letter was prepared by an outside consultant in an official capacity and for use in the city's decision-making process. You have also not explained why the factual information contained therein is not severable from its advice, opinion or recommendation. Consequently, this document as well as the drafts discussed above must be released if you do not establish they are within the section 3(a)(11) exception within two weeks of the date of this letter.

With regard to the remaining information, you may withhold in its entirety the routing slip since it contains only advice, opinion and recommendation. The

other remaining documents, however, must be released since they do not indicate on their face how they constitute protected advisory interagency or intra-agency communications; nor have you otherwise established that the section 3(a)(11) exception applies.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-582.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Ref.: ID#17173

Enclosures: Submitted documents
Open Records Decision Nos. 563, 559, 462, 273.

cc: Mr. Ed Mange
2705 Lipan.
Corpus Christi, Texas 78408
(w/o enclosures)